

Braun & Blaising

A Professional Corporation

July 24, 2003

Hand Delivered

Docket Unit - MS-4
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Docket No. 01-AFC-24

Dear Docket Clerk:

Enclosed for filing are the original and twelve copies of the **Comments Of The City Of Escondido On The Presiding Member's Proposed Decision** in the above referenced proceeding.

Respectfully,



Scott Blaising
Attorney for the City of Escondido

Enclosure

cc: All Parties of Record
Commissioner John L. Geesman
Commissioner William J. Keese
Hearing Officer Susan Gefter

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:

Application for Certification of the
Palomar Energy Project

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Docket No. 01-AFC-24

**COMMENTS OF THE
CITY OF ESCONDIDO
ON THE PRESIDING MEMBER'S PROPOSED DECISION**

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July 24, 2003

Attorneys for the City of Escondido

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:

Application for Certification of the
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**COMMENTS OF THE
CITY OF ESCONDIDO
ON THE PRESIDING MEMBER'S PROPOSED DECISION**

In response to the Notice of Availability issued by the Palomar AFC Committee, dated June 27, 2003, and pursuant to the Rules of Practice and Procedures of the Energy Resources Conservation and Development Commission ("CEC"), the City of Escondido ("Escondido"), a non-party, governmental agency, respectfully submits these comments on the Presiding Member's Proposed Decision ("PMPD").

I. INTRODUCTION AND SUMMARY

The Palomar Energy Project ("Project") will be located within Escondido, as a key element of the proposed Escondido Research and Technology Center ("ERTC"). In anticipation of the need for joint review, Escondido entered into the Memorandum of Understanding ("MOU"), dated July 25, 2002,¹ between CEC staff and Escondido, under which the CEC staff and Escondido coordinated the environmental and permitting reviews of the Project and the ERTC, respectively. As noted in the MOU, review of the

¹ See Exhibit 15.

Project and the ERTC presented “*a unique case of dual jurisdiction. [Escondido] has the land use jurisdiction to approve the ERTC, which includes an alternative of light industrial uses for Planning Area 1 should the [Project] not be approved by the [CEC]. The [CEC] has exclusive jurisdiction over the siting of power plants of the size and type proposed here.*”²

Escondido has overseen an extensive process to review and analyze the impacts associated with the ERTC. Escondido’s review process culminated on November 25, 2002, with action taken by the Escondido City Council to certify an environmental impact report,³ and to adopt a resolution and ordinances approving the development of the ERTC.⁴

As the ERTC and the Project moved through Escondido’s review process, a great deal of public support has been garnered. Escondido believes that the Project, in conjunction with the ERTC, will provide meaningful benefits to Escondido and the surrounding region, not the least of which being the ability of the Project to generate jobs, improve electric system reliability, and optimize key public infrastructure, including the recycled water system. Escondido supports the findings, conclusions and conditions contained in the PMPD, and urges the CEC to expeditiously approve the

² MOU at 4.

³ See Escondido Resolution No. 2002-307. See also Exhibits 21, 22, and 24.

⁴ See Escondido Resolution No. 2002-293 (approving a vesting tentative subdivision map with associated grading exemptions, general plan amendment, and specific plan amendment), Escondido Ordinance No. 2002-32 (rezoning certain property) and Escondido Ordinance No. 2002-34 (approving a development agreement for the ERTC). See also Exhibit 33.

Project.

II. COMMENTS

A. The PMPD Contains Findings, Conclusions And Conditions Consistent With Those Adopted By The Escondido City Council

As noted in the PMPD,⁵ Escondido, as lead agency, conducted a California Environmental Quality Act (“CEQA”) review of the ERTC and the ERTC Specific Plan Amendment, which includes the Project site. Escondido certified the final EIR on November 25, 2002.⁶ As part of this review process, Escondido established various conditions with respect to the development of the ERTC, including conditions that have a direct or indirect impact on the Project.⁷ As part of evidentiary hearings, Escondido summarized information on certain actions taken by Escondido that bear on the Project.⁸

Escondido has reviewed the PMPD and believes that the conditions set forth in the PMPD are consistent with those required by Escondido as part of its approval of the ERTC. With respect to conditions pertaining to biological resources, Escondido acknowledges that further negotiations with the affected wildlife agencies occurred subsequent to Escondido’s certification of the final environmental impact report, and that these negotiations resulted in additional mitigation requirements. Escondido concurs in these additional requirements, since, in this case, the ultimate requirements of

⁵ See PMPD at 197.

⁶ See note 3, above.

⁷ See Exhibit 31 (describing land use and other conditions imposed by Escondido) and Biological Resources Appendix A (PMPD at 215-228) (correlating Escondido’s biological resource conditions of approval to those contained in the PMPD).

⁸ See April 29, 2003 Reporter’s Transcript (“RT”) at 120.

the wildlife agencies prevail. Additionally, with respect to biological resource mitigation, Escondido strongly supports the use of Bernardo Mountain as a mitigation area.⁹ This is a highly visible area with a long history of contentious land issues – issues that would be addressed by its inclusion as a mitigation area.

B. Escondido Supports The Effort To Use PM₁₀ Funding For Local Programs

As noted in the PMPD,¹⁰ Escondido adopted a condition of approval for the ERTC requiring the Project owner to mitigate PM₁₀ emissions based on the CEC’s CEQA analysis. The PMPD concludes that “[t]o mitigate the project’s PM₁₀ and PM₁₀ precursor emissions that could contribute to violations of the state PM₁₀ standard, the project owner will provide \$1.86 million to the Air District to fund emission reduction programs, preferentially in the Escondido area.”¹¹

Escondido supports the CEC’s effort as set forth in the PMPD to ensure that funds are directed to emission reduction programs in the Escondido area – the area that will be most affected by emissions from the Project. Such action is consistent with the intent of the Escondido City Council. In its motion approving the resolutions and ordinances relating to the ERTC, the Escondido City Council directed Escondido staff to work with the San Diego Air Pollution Control District to ensure that the mitigation provided for the Project is directed to the Escondido area.

⁹ See PMPD at 202, 203.

¹⁰ See *Id.* at 117.

¹¹ *Id.* at 123. (Finding and Conclusion No. 15); Condition AQ-SC-10.

C. The PMPD Accurately Reflects Certain Benefits That The Project Is Expected To Provide To Escondido

The PMPD describes the Recycled Water Service Agreement among Palomar Energy, the Rincon del Diablo Municipal Water District (“Rincon”) and Escondido.¹² Under the agreement, Escondido will provide recycled water for use at the Project and will receive brine return from the Project. The PMPD correctly observes that the use of recycled water at the Project provides a benefit to Escondido. In addition to utilizing and paying for recycled water that would otherwise be discharged to the ocean, the PMPD correctly concludes that “[a]s a year round user of recycled water, the [Project] will effectively increased the capacity of [Escondido’s] ocean outfall system by 2.7 [million gallons per day], by reducing stress on the ocean outfall system’s capacity during periods of heavy rainfall.”¹³ This effective reduction of ocean outfall system capacity is a benefit to Escondido, and is particularly noteworthy since one of the key purposes associated with the Hale Avenue Resource Recovery Facility is to reduce or eliminate the occurrence of discharges to Escondido Creek during periods of heavy rainfall.

The Project also is expected to provide additional benefits to Escondido. In addition to optimizing the existing public infrastructure, Escondido concurs in the PMPD’s findings that the Project is expected to contribute to electric system reliability in the North San Diego County area, generate additional tax revenues, and, together with

¹² See PMPD at 235 (referring to Exhibit 111).

¹³ PMPD at 247. (Finding and Conclusion No. 16)

the ERTC, provide additional jobs and otherwise promote local economic benefits.¹⁴

Escondido believes that these expected benefits are sufficient to justify Escondido's support of the Project.

D. Escondido Requests That Certain Minor Inaccuracies Be Corrected

The PMPD provides certain descriptions of the water supply arrangement for the Project. In general, the PMPD accurately describes the relationship among Palomar Energy, Rincon and Escondido. However, the PMPD does contain certain inaccuracies. This is understandable, since the water service boundaries in the area do not correspond to Escondido's city boundaries.

Escondido requests that the following corrections be incorporated into the final CEC decision:

Page 232

The power plant will also utilize approximately 1,400 gallons per day of potable water for domestic purposes, which will be supplied via a connection with an existing ~~City of Escondido~~ **Rincon del Diablo Municipal Water District** supply line adjacent to the site.

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The Rincon del Diablo Municipal Water District (MWD), which serves **a portion of** the City of Escondido, **including the project site**, provided a Will Serve letter stating that recycled water is available to meet the needs of the power plant project.

Finding of Fact 9; Page 246

9. The Rincon del Diablo Municipal Water District (MWD), which serves **a portion of** the City of Escondido, **including the project site**, provided a Will

¹⁴ See PMPD at 337.

Serve letter stating that recycled water is available to meet the needs of the power plant project.

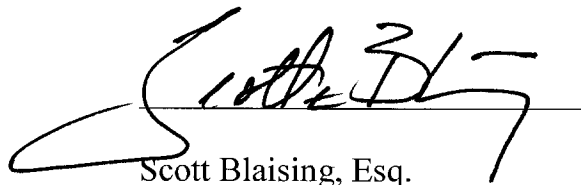
III. CONCLUSION

For the reasons set forth herein, Escondido supports the findings, conclusions and conditions contained in the PMPD, and urges the CEC to expeditiously approve the Project, correcting the minor inaccuracies described above.

Dated: July 24, 2003

Respectfully submitted,

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Escondido, CA 92025

A handwritten signature in black ink, appearing to read "Scott Blaising", is written over a horizontal line.

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CERTIFICATE OF SERVICE

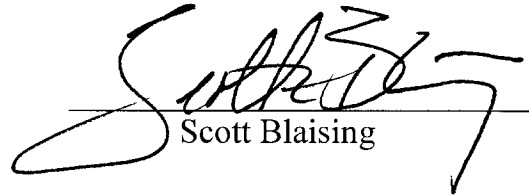
I certify that the following is true and correct:

On July 24, 2003, I served an electronic copy of the attached:

Comments Of The City Of Escondido On The Presiding Member's Proposed Decision

on all known parties to Docket No. 01-AFC-24, or their attorneys of record, that have provided copies of their e-mail addresses. I hand-delivered an original and twelve copies of the document to the CEC's docket clerk.

Executed this 24th day of July, 2003, at Sacramento, California.



Scott Blaising